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December 18, 2007

AGENDA ITEM 4

TO: MEMBERS OF AD HOC BOARD MEMBER ELECTIONS COMMITTEE

- I. SUBJECT:** Board Member Elections Process – Direct Recording Electronic Voting
- II. PROGRAM:** Administration
- III. RECOMMENDATION:** *Review Online and Telephone Voting Following Secretary of State Certification of a System*
- IV. ANALYSIS:**

At the conclusion of the August 10, 2007, Board Member Elections Committee meeting, the Chair directed staff to conduct further analysis and recommendations related to the implementation of direct recording electronic voting which includes on-line (Internet) and telephone voting (Item 4, part of sub-item 6)

Background

Prior to 1996 legislation, both election procedures and results for CalPERS elections required review, approval, and certification by the California Secretary of State (Government Code Section 20096). A legislative change sponsored by the Secretary of State eliminated its review, approval, and certification of CalPERS election procedures only. The Secretary of State retains the long-standing requirement of certifying CalPERS election results.

Government Code Section 20096, effective in 1996, required the Board to distribute ballots, provide for their return without cost to the members, and develop election procedures.

Since the change in Government Code 20096, CalPERS continued to use Secretary of State certified vendors and systems for preparing ballots and conducting canvassing (i.e. ballot counting) processes in order to be above reproach in the conduct of CalPERS elections.

Direct recording electronic voting systems are currently prohibited for use in California. Elections Code Section 19250 states in part:

- On and after January 1, 2005, the Secretary of State shall not approve a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.
- A direct recording electronic voting system shall not be connected to the Internet at any time.
- A direct recording electronic voting system shall not be permitted to receive or transmit official election results through an exterior communication network, including the public telephone system.
- A direct recording electronic voting system shall not be permitted to receive or transmit wireless communications or wireless data transfers.

On-line and Telephone Voting

On-line voting allows the vote to be transmitted via the Internet. On-line voting is one option in systems providing for direct recording electronic voting.

Telephone voting allows the vote to be transmitted via telephone lines. Telephone voting is another option in systems providing for direct recording electronic voting.

There is no system or vendor certified to conduct direct recording electronic voting in California. Government Code section 20096 requires that CalPERS secure the Secretary of State's certification of its elections. Staff contacted the Secretary of State to determine whether they would certify election results if CalPERS chose to use non-certified vendors and systems in the conduct of its elections. The Secretary of State responded that they would not certify CalPERS election results if CalPERS chose to use non-certified vendors and systems in the conduct of its elections.

Use of the Internet and telephone for voting is technically possible. For example, on-line and telephone voting could be conducted by use of a modified proxy voting service, although none are certified for use in California elections, and there does not appear to be a system commercially available.

Staff has been in discussions with one of the CalPERS proxy voting services. Discussion results indicate that a system could be developed to process votes presented via the Internet, telephone, paper, or in any combination of the three. Such a system would first require development, testing, a change in the Elections Code authority for direct recording electronic voting systems, and Secretary of State certification.

Recommendation

Staff recommends that on-line and telephone voting for use in CalPERS elections should be revisited following the certification of a system or systems for use in California and a change in the Elections Code allowing use of the Internet and telephone system.

CalPERS is committed to systems and processes that meet or exceed statutory and regulatory requirements and wishes to conduct its elections in a manner that is above reproach. To consider implementation of online or telephone voting now exposes CalPERS to a risk that should not be taken.

V. STRATEGIC PLAN:

This item is not a specific product of the Strategic Plan, but is part of the regular and ongoing workload of the Operations Support Services Division.

VI. RESULTS/COSTS:

Unknown until a specific certified system is available for review.

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